



Reprinted
March 4, 2003

SENATE BILL No. 478

DIGEST OF SB 478 (Updated March 3, 2003 4:27 PM - DI 105)

Citations Affected: IC 23-2; IC 24-4.8; noncode.

Synopsis: Predatory lending. Restricts certain lending acts and practices. Establishes the mortgage fraud unit under the attorney general to investigate and bring actions against a lender who engages in mortgage fraud. Preempts regulation of covered acts and practices by political subdivisions. Increases mortgage recording fees. Allocates increased revenue to the Indiana housing finance authority, attorney general, and county recorders. Allows the securities commissioner to enter orders of rescission, restitution, and disgorgement, including interest at the rate of 8% to loan brokers.

Effective: July 1, 2003; January 1, 2004.

Clark, Lanane, Smith S

January 21, 2003, read first time and referred to Committee on Insurance and Financial Institutions.

February 20, 2003, amended, reported favorably — Do Pass.
March 3, 2003, read second time, amended, ordered engrossed.

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SB 478—LS 7842/DI 108+



Reprinted
March 4, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 478

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-5-10, AS AMENDED BY P.L.14-2000,
2 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the**
4 **commissioner that a person has engaged in or is about to engage in**
5 **an act or a practice constituting a violation of this chapter or a rule**
6 **adopted or an order issued under this chapter, the commissioner**
7 **may investigate and may issue:**
8 (1) **with a prior hearing if there exists no substantial threat of**
9 **immediate irreparable harm; or**
10 (2) **without a prior hearing if there exists a substantial threat**
11 **of immediate irreparable harm;**
12 **orders and notices the commissioner determines to be in the public**
13 **interest, including cease and desist orders, orders to show cause,**
14 **and notices. After notice and hearing, the commissioner may enter**
15 **an order of rescission, restitution, or disgorgement, including**
16 **interest at the rate of eight percent (8%) per year, directed to a**

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1 person who has violated this chapter or a rule or order under this
2 chapter.

3 (b) Upon the issuance of an order or notice without a prior
4 hearing by the commissioner under subsection (a)(2), the
5 commissioner shall promptly notify the respondent:

- 6 (1) that the order or notice has been issued;
7 (2) of the reasons the order or notice has been issued; and
8 (3) that upon the receipt of a written request the matter will
9 be set down for a hearing to commence within forty-five (45)
10 business days after receipt of the request unless the
11 respondent consents to a later date.

12 If a hearing is not requested and not ordered by the commissioner,
13 an order remains in effect until it is modified or vacated by the
14 commissioner. If a hearing is requested or ordered, the
15 commissioner, after notice of an opportunity for hearing, may
16 modify or vacate the order or extend it until final determination.

17 (c) The commissioner may deny, suspend, or revoke the license of
18 a licensee or the registration of a registrant if the licensee or the
19 registrant:

- 20 (1) fails to maintain the bond required under section 5 of this
21 chapter;
22 (2) is insolvent;
23 (3) has violated any provision of this chapter;
24 (4) has knowingly filed with the commissioner any document or
25 statement containing any false representation of a material fact or
26 omitting to state a material fact or if a representation becomes
27 false after the filing but during the term of a license or certificate
28 of registration as provided in subsection ~~(e)~~; (g); or
29 (5) has been convicted, within ten (10) years before the date of the
30 application, renewal, or review, of any crime involving fraud or
31 deceit.

32 ~~(b)~~ (d) The commissioner may not enter a final order denying,
33 suspending, or revoking the license of a licensee or the registration of
34 a registrant without prior notice to all interested parties, opportunity for
35 a hearing, and written findings of fact and conclusions of law.
36 However, the commissioner may by summary order deny, suspend, or
37 revoke a license or certificate of registration pending final
38 determination of any proceeding under this section. Upon the entry of
39 a summary order, the commissioner shall promptly notify all interested
40 parties that it has been entered, of the reasons for the summary order,
41 and that upon receipt by the commissioner of a written request from a
42 party, the matter will be set for hearing to commence within fifteen



(15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ (e) IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ (f) If:

(1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or

(2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within fifteen (15) days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

~~(e)~~ (g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement.

SECTION 2. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]:

ARTICLE 4.8. INDIANA FAIR LENDING ACT

Chapter 1. Consumer Protections

Sec. 1. (a) Except as provided in subsection (c), this article does not apply to a bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes, preempts, or has been determined to preclude or preempt this article to a federally chartered bank, trust company, savings and loan, savings bank, or credit union.



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(b) Any federal preclusion or preemption under subsection (a) applies to a state chartered entity only as it applies to the same type of federally chartered entity.

(c) The requirements of this article apply to a mortgage broker who originates or brokers a loan that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.

Sec. 2. (a) The definitions in this section apply throughout this article.

(b) "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity, as determined under the Federal Bank Holding Company Act (12 U.S.C. 1841 et. seq.), as amended. The term does not include an entity whose predominant business is providing tax deferred defined contribution pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code.

(c) "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

(d) "Covered loan" means a consumer credit mortgage loan transaction other than an open end credit plan or a reverse mortgage in which:

- (1) the borrower is a natural person;
- (2) the debt is incurred by the obligor primarily for personal, family, or household purposes;
- (3) the loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the obligor as the obligor's principal dwelling; and
- (4) the terms of the loan provide:

(A) that the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24), as amended from time to time) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 602(aa), as amended from time to time, and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32, as amended from time to time; or

(B) for total points and fees payable by the borrower at or



1 before the loan closing, exceed six percent (6%) of the total
2 loan amount.

3 (e) "Lender" means any individual or entity that in any twelve
4 (12) month period originates one (1) or more covered loans. The
5 individual or entity to which the covered loan is initially payable,
6 either on the face of the note or contract or by agreement when
7 there is no note or contract, is considered to be the lender.

8 (f) "Mortgage broker" means a person, except for an employee
9 or exclusive agent of a lender, who, for compensation, brings an
10 obligor and a lender together to obtain a covered loan.

11 (g) "Municipality" means a county, city, town, or township.

12 (h) "Ninety (90) day period" means the period beginning on the
13 day notice is provided under section 3 of this chapter and ending
14 ninety (90) days later.

15 (i) "Obligor" means each obligor, co-obligor, cosigner, or
16 guarantor obligated to repay a covered loan.

17 (j) "Political subdivision" means a municipality, school district,
18 public library, local housing authority, fire protection district,
19 public transportation corporation, local building authority, local
20 hospital authority or corporation, local airport authority, special
21 service district, special taxing district, or any other type of local
22 governmental corporate entity.

23 (k) "Servicer" has the same meaning provided in Section
24 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12
25 U.S.C. 2601 et. seq., as amended.

26 (l) "Total points and fees payable by the borrower at or before
27 the loan closing" means points and fees (as defined in 12 CFR
28 226.32(b)(1), as amended from time to time).

29 Sec. 3. A covered loan is subject to the following limitations:

30 (1) A covered loan may not require a scheduled payment that
31 is more than twice as large as the average of earlier scheduled
32 monthly payments unless the a payment becomes due and
33 payable at least one hundred twenty (120) months after the
34 date of the loan. This prohibition does not apply when the
35 payment schedule is adjusted to account for the seasonal or
36 irregular income of the obligor or if the loan is a bridge loan
37 connected with or related to the acquisition or construction of
38 a dwelling intended to become the obligor's principal
39 dwelling.

40 (2) A covered loan may not contain a call provision that
41 permits the lender, in the lender's sole discretion, to
42 accelerate the indebtedness. This prohibition does not apply

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when repayment of the loan has been accelerated:

(A) by default;

(B) under a due on sale provision;

(C) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(D) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in the security for the loan.

(3) A covered loan may not require a payment schedule with regular periodic payments that cause the principal balance to increase. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(4) A covered loan may not require any increase in the interest rate as a result of a default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the loan agreement, provided the change in the interest rate is not occasioned by the default or a permissible acceleration of the indebtedness.

(5) A covered loan may not include terms under which more than two (2) periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(6) Prepayment fees are subject to the following limitations:

(A) A prepayment fee or penalty is permitted only during the first thirty-six (36) months after the date of execution of a covered loan.

(B) A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment fee. The terms of the offer must be in writing and initialed by the borrower. The offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(C) A prepayment fee or penalty may not be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of the refinancing.

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(D) A prepayment fee or penalty may not exceed two percent (2%) of the net unpaid balance as of the date of the prepayment.

Sec. 4. (a) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice (or a substantially similar notice) in writing to the obligor within a reasonable time of determining that the loan would result in a covered loan but not later than the time the notice is required under the notice provision contained in 12 CFR 226.31(c), as amended.

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit history and financial circumstances, your earnings history, the amount of your home's value that you wish to borrow, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or mortgage broker you select.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at _____ (insert telephone number) or go to _____ (insert web address) for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you also should remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your

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home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

(b) A lender or mortgage broker has met its obligation to provide the disclosure described in subsection (a) if the consumer provides the lender or mortgage broker with a signed acknowledgment of receipt of a copy of the notice set forth in subsection (a).

(c) A lender who originates a covered loan may not extend credit to an obligor based on the obligor's collateral without regard to the obligor's ability to repay, including the obligor's current or expected income, current obligations, and employment.

(d) A lender will be presumed to have violated subsection (c) if the lender makes a covered loan without verifying or documenting the obligor's repayment ability.

(e) Any expected income from any source other than the obligor's equity in the property securing the covered loan, including regular salary or wages, gifts, expected retirement payments, or income from self employment may be considered when evaluating the obligor's ability to repay. A lender may verify and document an obligor's income and current obligations through any reliable source that provides the lender with a reasonable basis for believing there are sufficient funds to support the covered loan. Reliable sources include, but are not limited to, credit reports, tax returns, pension statements, and payment records for employment income.

(f) In the case of a loan based on the borrower's statement of the borrower's income, the reasonable basis for believing there are sufficient funds to support the covered loan may be the income stated by the consumer, as well as other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of that type. A lender may not knowingly or willfully originate a covered loan as a loan based on the borrower's statement of the borrower's income with the intent to evade this



subsection.

(g) A lender may not, within two (2) years after having made a covered loan, charge an obligor points or fees in connection with the covered loan if the proceeds of the covered loan are used to refinance an existing covered loan for which points and fees were charged. However, points and fees may be charged on any proceeds of a covered loan that are in excess of the amount refinanced on the existing covered loan.

(h) A lender may not finance, directly or indirectly, into a covered loan or finance to the same obligor within thirty (30) days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. Any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis may not be considered financed by the lender. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by an obligor's default.

(i) A lender may not replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a covered loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this subsection, a "subsidized low rate loan" is a loan that carries a current interest rate at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

(j) A lender may not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor before the disbursement of funds to the contractor.

(k) A lender may not recommend or encourage default on an



existing loan or other debt before or in connection with the closing or planned closing of a covered loan that refinances all or any part of the existing loan or debt.

(l) A lender may not charge a fee for informing or transmitting to a person the balance due to pay off a covered loan or to provide release upon prepayment. A lender must provide a payoff balance not later than seven (7) business days after the request is received by the lender.

(m) A person may not knowingly and intentionally make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of this subsection, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

Sec. 5. A servicer of a covered loan shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor and does not apply to covered loans held or serviced by a lender for less than ninety (90) days.

Chapter 2. Enforcement and Mortgage Fraud Unit

Sec. 1. (a) The attorney general may enforce this article for any violation occurring within five (5) years after the making of the covered loan.

(b) As used in this chapter, "fraud" means an act or practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a lender:

- (1) knowingly or intentionally makes a material misrepresentation to a borrower;
- (2) knowingly or intentionally conceals or obscures material information from the borrower regarding the terms or conditions of the transaction;
- (3) knowingly or intentionally consummates the credit mortgage transaction with the knowledge that the borrower will be unable to successfully fulfill the terms or conditions of the mortgage loan based upon the borrower's finances at the time of the consummation;



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(4) knowingly or intentionally includes terms or conditions in the mortgage loan that substantially increase the likelihood of default; or

(5) violates this article.

The applicable provisions of this section also apply to a mortgage broker or real estate appraiser who assists in or is a part of the consumer credit mortgage transaction.

(c) As used in this chapter, "unit" refers to the mortgage fraud unit established by this section.

(d) The mortgage fraud unit is established in the office of the attorney general.

(e) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(f) The unit shall do the following:

(1) Investigate allegations of fraud in connection with mortgage loans.

(2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage loans.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage loans.

(4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage loans.

(g) The unit shall cooperate with the following to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

Sec. 2. The attorney general may file complaints with any of the agencies listed in section 1(f) of this chapter to implement this chapter.

Sec. 3. The establishment of the unit and its powers does not limit the jurisdiction of any agency described in section 1(f) of this



chapter.

Sec. 4. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of any person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 5. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

(1) issue an injunction;

(2) order a person to make restitution;

(3) void or limit the application of obligations that violate this article;

(4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

(5) impose a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

Sec. 6. (a) A person who violates an injunction issued under section 5 of this chapter must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(b) The court that issues an injunction under section 5 of this chapter retains jurisdiction over a proceeding seeking imposition of a civil penalty under this section.

(c) The attorney general, acting in the name of the state, has the exclusive right to petition for imposition of a civil penalty under this section.

(d) If a court determines that a person:

(1) has violated an injunction issued under section 5 of this



chapter; and

(2) must pay a civil penalty;

the court shall also require the person to reimburse the state for reasonable costs related to bringing an action under this section.

Sec. 7. A lender who commits an act of fraud in connection with a mortgage loan is not subject to a civil penalty under this chapter if the lender within ninety (90) days of the act of fraud and before any action under this chapter is instituted makes whatever adjustments are necessary to the loan to correct or remedy the fraudulent terms or conditions.

Sec. 8. (a) If a person suffers a pecuniary loss as a result of a violation of this article, the person may bring a civil action for the following:

(1) Actual damages.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(b) An action under this section may not be brought, commenced, or maintained unless the action is filed within five (5) years after the date the person knew or by the exercise of reasonable diligence should have known of the violation of this article.

(c) An award of actual damages under subsection (a)(1) has priority over a civil penalty imposed under this chapter.

Chapter 3. State Power to Regulate Lending

Sec. 1. (a) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(b) Political subdivisions may not enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(1) are subject to the jurisdiction of the department of financial institutions;

(2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the



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Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);

(4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) are created by the Indiana housing finance authority.

Chapter 4. Revenue and Appropriations

Sec. 1. The fees assessed by the county recorder to record a mortgage are increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. The revenue from this fee increase shall be distributed as follows:

(1) Fifty percent (50%) to the attorney general for use in mortgage fraud enforcement under section 3 of this chapter.

(2) Fifty percent (50%) to the Indiana housing finance authority under IC 5-20-1-3 for mortgage literacy training and programs under section 2 of this chapter.

Sec. 2. The fee allocation under section 1(2) of this chapter shall be distributed on a quarterly basis to the Indiana housing finance authority for the purpose of identifying, promoting, and funding mortgage literacy training and programs throughout the state. Such training and programs shall cover topics that include home buying and mortgage lending.

Sec. 3. The fee allocation under section 1(1) of this chapter shall be distributed on a quarterly basis to the mortgage fraud unit created within the office of the attorney general by IC 24-4.8-2-1(c).

Sec. 4. (a) An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative services agency before any fee revenue may be allocated to the mortgage fraud unit of the attorney general's office or the department of education. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract with the Kelly School of Business at Indiana University to conduct a study of the causes of the high rate of foreclosure in Indiana during 2001 and 2002.



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1 (b) The results of the study shall be reported in writing to the
2 legislative services agency not later than December 31, 2004. The
3 legislative services agency shall distribute the report to the
4 legislative council, the department of financial institutions, and the
5 attorney general.

6 SECTION 3. [EFFECTIVE JANUARY 1, 2004] The provisions of
7 IC 24-4.8, as added by this act, are severable in the manner
8 provided by IC 1-1-1-8(b).

9 SECTION 4. [EFFECTIVE JANUARY 1, 2004] IC 24-4.8, as
10 added by this act, applies only to loans originated after December
11 31, 2003.

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SENATE MOTION

Mr. President: I move that Senator Smith S be added as coauthor of Senate Bill 478.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 478, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert the following:

"SECTION 1. IC 23-2-5-10, AS AMENDED BY P.L.14-2000, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule adopted or an order issued under this chapter, the commissioner may investigate and may issue:**

(1) with a prior hearing if there exists no substantial threat of immediate irreparable harm; or

(2) without a prior hearing if there exists a substantial threat of immediate irreparable harm;

orders and notices the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a)(2), the commissioner shall promptly notify the respondent:

(1) that the order or notice has been issued;

(2) of the reasons the order or notice has been issued; and

(3) that upon the receipt of a written request the matter will be set down for a hearing to commence within forty-five (45) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee or the

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registrant:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) is insolvent;
- (3) has violated any provision of this chapter;
- (4) has knowingly filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact or if a representation becomes false after the filing but during the term of a license or certificate of registration as provided in subsection ~~(e)~~; **(g)**; or
- (5) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

~~(b)~~ **(d)** The commissioner may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(c)~~ **(e)** IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ **(f)** If:

- (1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or
- (2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within fifteen (15) days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the

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licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

~~(e)~~ (g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement."

Page 4, between lines 5 and 6, begin a new line double block indented and insert:

"(D) A prepayment fee or penalty may not exceed two percent (2%) of the net unpaid balance as of the date of the prepayment."

Page 4, line 20, after "credit" insert **"history"**.

Page 4, line 21, delete "loan-to-value" and insert **"amount of your home's value that you wish to borrow,"**.

Page 4, line 22, delete "requested,".

Page 4, line 31, delete "1-888-466-3487" and insert **"_____ (insert telephone number)"**.

Page 4, line 32, delete **"www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm"** and insert **"_____ (insert web address)"**.

Page 5, line 17, delete "engage in a" and insert **"extend"**.

Page 5, line 18, delete "pattern or practice of extending".

Page 5, line 23, delete "engages in a pattern or practice of making" and insert **"makes a"**.

Page 5, line 24, delete "loans" and insert **"loan"**.

Page 5, line 37, delete "stated income".

Page 5, line 37, after "loan" insert **"based on the borrower's statement of the borrower's income"**.

Page 6, line 1, delete "stated income".

Page 6, line 2, after "loan" insert **"based on the borrower's statement of the borrower's income"**.

Page 6, line 4, after "a covered loan" insert **"."**.

Page 6, line 5, delete "unless the refinancing is in the obligor's interest."

Page 6, line 8, after "another covered loan" insert **"."**.



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Page 6, line 9, delete "unless the refinancing is in the obligor's interest."

Page 6, line 28, after "other" insert "**subsidized**".

Page 6, line 29, after "years of the" insert "**subsidized**".

Page 6, line 31, delete ""low" and insert ""**subsidized low**".

Page 6, line 38, after "is a" insert "**subsidized**".

Page 7, between lines 4 and 5, begin a new paragraph and insert:

"(k) A lender may not recommend or encourage default on an existing loan or other debt before or in connection with the closing or planned closing of a covered loan that refinances all or any part of the existing loan or debt.

(l) A lender may not charge a fee for informing or transmitting to a person the balance due to pay off a covered loan or to provide release upon prepayment. A lender must provide a payoff balance not later than seven (7) business days after the request is received by the lender."

Page 7, line 5, delete "(k)" and insert "**(m)**".

Page 7, line 5, after "knowingly" insert "**and intentionally**".

Page 7, line 24, delete "one (1) year" and insert "**two (2) years**".

Page 7, line 25, delete "It is the intent of the general assembly that persons".

Page 7, delete lines 26 through 30.

Page 7, line 39, delete "fraud" and insert "**violations of this article**".

Page 7, line 40, delete "lending." and insert "**loans that are covered under this article and mortgage loans that are not covered under this article.**".

Page 7, line 42, delete "fraud" and insert "**violations of this article**".

Page 7, line 42, delete "lending." and insert "**loans that are covered under this article and mortgage loans that are not covered under this article.**".

Page 8, line 2, delete "fraud" and insert "**violations of this article**".

Page 8, line 3, delete "lending." and insert "**loans that are covered under this article and mortgage loans that are not covered under this article.**".

Page 8, line 5, delete "fraud" and insert "**violations of this article**".

Page 8, line 6, delete "lending." and insert "**loans that are covered under this article and mortgage loans that are not covered under this article.**".

Page 8, line 26, delete "fraud" and insert "**violations of this article**".

Page 9, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 5. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

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- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) void or limit the application of obligations that violate this article;
- (4) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (5) impose a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

Sec. 6. (a) A person who violates an injunction issued under section 5 of this chapter must pay a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation.

(b) The court that issues an injunction under section 5 of this chapter retains jurisdiction over a proceeding seeking imposition of a civil penalty under this section.

(c) The attorney general, acting in the name of the state, has the exclusive right to petition for imposition of a civil penalty under this section.

(d) If a court determines that a person:

- (1) has violated an injunction issued under section 5 of this chapter; and
- (2) must pay a civil penalty;

the court shall also require the person to reimburse the state for reasonable costs related to bringing an action under this section."

Page 9, line 2, delete "5." and insert "7."

Page 9, line 29, after "department" insert "of financial institutions".

Page 10, line 6, delete "is credited to the" and insert "shall be distributed as follows:

- (1) Fifty percent (50%) to the attorney general for use in mortgage fraud enforcement under section 3 of this chapter.**
- (2) Fifty percent (50%) to the department of education for financial literacy training and programs under section 2 of this chapter."**

Page 10, delete lines 7 through 15.

Page 10, line 16, before "department" begin a new paragraph and insert:

"Sec. 2. The fee allocation under section 1(2) of this chapter shall be distributed on a quarterly basis to the".

Page 10, line 19, delete "budgeting, insurance, investing, managing credit, financial" and insert "home buying and mortgage lending."

Page 10, delete lines 20 through 22.

Page 10, line 23, before "mortgage" begin a new paragraph and

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insert:

"Sec. 3. The fee allocation under section 1(1) of this chapter shall be distributed on a quarterly basis to the".

Page 10, between lines 24 and 25, begin a new paragraph and insert:

"Sec. 4. (a) An allocation of seventy-five thousand dollars (\$75,000) consisting of the increased fees under this chapter shall be made to the legislative services agency before any fee revenue may be allocated to the mortgage fraud unit of the attorney general's office or the department of education. The seventy-five thousand dollar (\$75,000) allocation shall be used to contract with the Kelly School of Business at Indiana University to conduct a study of the causes of the high rate of foreclosure in Indiana during 2001 and 2002.

(b) The results of the study shall be reported in writing to the legislative services agency not later than December 31, 2004. The legislative services agency shall distribute the report to the legislative council, the department of financial institutions, and the attorney general."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 478 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 478 be amended to read as follows:

Page 4, line 9, delete "involving real property located in Indiana that is" and insert **"other than an open end credit plan or a reverse mortgage in which:**

- (1) the borrower is a natural person;**
- (2) the debt is incurred by the obligor primarily for personal, family, or household purposes;**
- (3) the loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the obligor as the obligor's principal dwelling; and**
- (4) the terms of the loan provide:**
 - (A) that the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24), as amended from time to time) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 602(aa), as amended from time to time, and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32, as amended from time to time; or**
 - (B) for total points and fees payable by the borrower at or before the loan closing, exceed six percent (6%) of the total loan amount."**

Page 4, delete lines 10 through 14.

Page 4, between lines 37 and 38, begin a new paragraph and insert:

"(l) "Total points and fees payable by the borrower at or before the loan closing" means points and fees (as defined in 12 CFR 226.32(b)(1), as amended from time to time)."

Page 5, line 40, delete "A lender is considered to have complied with this" and insert **"The terms of the offer must be in writing and initialed by the borrower. The offer must be clearly labeled in large bold type and must include the following disclosure:"**.

Page 5, delete lines 41 through 42.

Page 6, delete line 6.

Page 8, line 12, delete "refinance the same obligor into another" and insert **", within two (2) years after having made a covered loan, charge an obligor points or fees in connection with the covered loan if the proceeds of the covered loan are used to refinance an**



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existing covered loan for which points and fees were charged. However, points and fees may be charged on any proceeds of a covered loan that are in excess of the amount refinanced on the existing covered loan."

Page 8, delete lines 13 through 21.

Page 9, line 41, delete "two (2) years of the occurrence of the" and insert **"five (5) years after the making of the covered loan."**

Page 9, delete line 42, begin a new paragraph and insert:

"(b) As used in this chapter, "fraud" means an act or practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a lender:

- (1) knowingly or intentionally makes a material misrepresentation to a borrower;**
- (2) knowingly or intentionally conceals or obscures material information from the borrower regarding the terms or conditions of the transaction;**
- (3) knowingly or intentionally consummates the credit mortgage transaction with the knowledge that the borrower will be unable to successfully fulfill the terms or conditions of the mortgage loan based upon the borrower's finances at the time of the consummation;**
- (4) knowingly or intentionally includes terms or conditions in the mortgage loan that substantially increase the likelihood of default; or**
- (5) violates this article.**

The applicable provisions of this section also apply to a mortgage broker or real estate appraiser who assists in or is a part of the consumer credit mortgage transaction."

Page 10, line 1, delete "(b)" and insert **"(c)"**.

Page 10, line 3, delete "(c)" and insert **"(d)"**.

Page 10, line 5, delete "(d)" and insert **"(e)"**.

Page 10, line 8, delete "(e)" and insert **"(f)"**.

Page 10, line 9, delete "violations of this article" and insert **"fraud"**.

Page 10, line 10, delete "that are covered under this" and insert **"."**

Page 10, delete lines 11 through 12.

Page 10, line 14, delete "violations of this article" and insert **"fraud"**.

Page 10, line 15, delete "that are covered under this article and mortgage loans" and insert **"."**

Page 10, delete line 16.

Page 10, line 18, delete "violations of this article" and insert **"fraud"**.



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Page 10, line 19, delete "that are covered under this" and insert ".".

Page 10, delete lines 20 through 21.

Page 10, line 23, delete "violations of" and insert "**fraud**".

Page 10, line 24, delete "this article".

Page 10, line 24, delete "that are" and insert ".".

Page 10, delete lines 25 through 26.

Page 10, line 27, delete "(f)" and insert "(g)".

Page 11, line 4, delete "violations" and insert "**fraud**".

Page 11, line 5, delete "of this article".

Page 12, line 6, delete "in a covered loan".

Page 12, line 6, delete "acts in good faith and" and insert "**commits an act of fraud in connection with a mortgage loan is not subject to a civil penalty under this chapter**".

Page 12, line 7, delete "fails to comply with this article does not violate this article".

Page 12, line 8, delete "establishes that".

Page 12, line 8, delete "discovery of" and insert "**act of fraud**".

Page 12, line 9, delete "an error".

Page 12, line 9, delete "section" and insert "**chapter**".

Page 12, line 9, delete ":" and insert "**makes**".

Page 12, delete line 10.

Page 12, line 11, delete "(2)".

Page 12, line 11, delete "are made".

Page 12, run in lines 9 through 11.

Page 12, delete lines 12 through 17 and insert "**to correct or remedy the fraudulent terms or conditions**".

Page 12, between lines 17 and 18, begin a new paragraph and insert:

"Sec. 8. (a) If a person suffers a pecuniary loss as a result of a violation of this article, the person may bring a civil action for the following:

(1) Actual damages.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(b) An action under this section may not be brought, commenced, or maintained unless the action is filed within five (5) years after the date the person knew or by the exercise of reasonable diligence should have known of the violation of this article.

(c) An award of actual damages under subsection (a)(1) has

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priority over a civil penalty imposed under this chapter."

(Reference is to SB 478 as printed February 21, 2003.)

CLARK

SENATE MOTION

Mr. President: I move that Senate Bill 478 be amended to read as follows:

Page 3, between lines 36 and 37, begin a new paragraph and insert:

"Sec. 1. (a) Except as provided in subsection (c), this article does not apply to a bank, trust company, savings and loan, savings bank, or credit union that is chartered under the laws of Indiana to the extent federal law precludes, preempts, or has been determined to preclude or preempt this article to a federally chartered bank, trust company, savings and loan, savings bank, or credit union.

(b) Any federal preclusion or preemption under subsection (a) applies to a state chartered entity only as it applies to the same type of federally chartered entity.

(c) The requirements of this article apply to a mortgage broker who originates or brokers a loan that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union."

Page 3, line 37, delete "1." and insert "2."

Page 4, line 38, delete "2." and insert "3."

Page 6, line 14, delete "3." and insert "4."

Page 9, line 30, delete "4." and insert "5."

(Reference is to SB 478 as printed February 21, 2003.)

CLARK

SENATE MOTION

Mr. President: I move that Senate Bill 478 be amended to read as follows:

Page 13, line 15, delete "department of education for" and insert **"Indiana housing finance authority under IC 5-20-1-3 for mortgage"**.

Page 13, line 16, delete "financial".

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Page 13, line 19, delete "department of education" and insert **"Indiana housing finance authority"**.

Page 13, line 20, delete "financial" and insert **"mortgage"**.

(Reference is to SB 478 as printed February 21, 2003.)

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